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Atorneys for Plaintiff YELLOWCAKE, INC., and Counterdefendants COLONIZE MEDIA, INC., and JOSE DAVID HERNANDEZ

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

YELLOWCAKE, INC., a California corporation,

Plaintiff,

V.

Defendant

**Case No.:
1:20-cv-00988-DAD-BAM**

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
PLAINTIFF AND
COUNTERDEFENDANTS'
RULE 12(b)(6) MOTION TO
DISMISS DEFENDANT'S FIRST
AMENDED COUNTERCLAIMS**

Judge: Hon. Dale A. Drozd
Date: November 3, 2020
Time: 9:30 a.m.
Courtroom: Courtroom 5, 7th floor

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF AND
COUNTERDEFENDANTS' RULE 12(b)(6) MOTION TO DISMISS
DEFENDANT'S FIRST AMENDED COUNTERCLAIMS**

1 HYPHY MUSIC, INC.,)
 2)
 3 Counterclaimant,)
 4)
 5 v.)
 6 YELLOWCAKE, INC.; COLONIZE)
 7 MEDIA, INC.; JOSE DAVID)
 8 HERNANDEZ; and JESUS CHAVEZ SR,)
 9)
 10 Counterdefendants.)
 11

INTRODUCTION

12 Plaintiff Yellowcake, Inc., (“Yellowcake”) and Counterdefendants Colonize
 13 Media, Inc., (“Colonize”) and Jose David Hernandez (“Hernandez”), respectfully
 14 request that pursuant to Rule 201 of the Federal Rules of Evidence, this Court take
 15 judicial notice of the U.S. Copyright Office records identified below, in connection
 16 with Plaintiff/Counterdefendants’ Motion to Dismiss Defendant/Counterclaimant
 17 Hyphy Music Inc.’s (“Hyphy”) First Amended Counterclaims.
 18

19 The attached Documents, numbered 1-9, consist of records maintained and made
 20 publicly available online by the U.S. Copyright Office pertaining to the copyright
 21 registrations that are the subject of the First Amended Counterclaims that
 22 Plaintiff/Counterdefendants move to dismiss. Plaintiff/Counterdefendants have
 23 attached a copy of one or more of these records to the Declaration of Seth L. Berman,
 24 Esq., and Reply Declaration of Seth L. Berman, Esq., filed with the
 25 Plaintiff/Counterdefendant’s initial Memorandum and Reply Memorandum in support
 26 of this Motion to Dismiss. Printouts of the online Copyright Office Catalog records are
 attached to this Request as Documents 1-9 as follows:
 27

28 1. A copy of the U.S. Copyright Office’s Online Catalog information for
 Defendant/Counterclaimant Hyphy’s Sound Recording Registration No. SR

1 0000869114 (**Exhibit “A”**) to the Reply Declaration of Seth L. Berman, Esq., in
2 support of Plaintiff and Counterdefendants’ Motion to Dismiss
3 Defendant/Counterclaimant’s First Amended Counterclaims (also identified in Exhibit
4 “B” to First Amended Counterclaims (ECF 15)).

5 2. A copy of the U.S. Copyright Office’s Online Catalog information for
6 Defendant/Counterclaimant Hyphy’s Sound Recording Registration No. SR
7 0000876925 (**Exhibit “B”**) to the Reply Declaration of Seth L. Berman, Esq., in
8 support of Plaintiff and Counterdefendants’ Motion to Dismiss
9 Defendant/Counterclaimant’s First Amended Counterclaims (also identified in Exhibit
10 “B” to First Amended Counterclaims (ECF 15)).

11 3. A copy of the U.S. Copyright Office’s Online Catalog information for
12 Defendant/Counterclaimant Hyphy’s Sound Recording Registration No. SR
13 0000820139 (**Exhibit “C”**) to the Reply Declaration of Seth L. Berman, Esq., in
14 support of Plaintiff and Counterdefendants’ Motion to Dismiss
15 Defendant/Counterclaimant’s First Amended Counterclaims (also identified in Exhibit
16 “B” to First Amended Counterclaims (ECF 15)).

17 4. A copy of the U.S. Copyright Office’s Online Catalog information for
18 Defendant/Counterclaimant Hyphy’s Sound Recording Registration No. SR
19 0000810777 (**Exhibit “D”**) to the Reply Declaration of Seth L. Berman, Esq., in
20 support of Plaintiff and Counterdefendants’ Motion to Dismiss
21 Defendant/Counterclaimant’s First Amended Counterclaims (also identified in Exhibit
22 “B” to First Amended Counterclaims (ECF 15)).

23 5. A copy of the U.S. Copyright Office’s Online Catalog information for
24 Plaintiff/Counterdefendant Yellowcake’s Sound Recording Registration No. SR
25 0000863319 (**Exhibit “E”**) to the Reply Declaration of Seth L. Berman, Esq., in
26 support of Plaintiff and Counterdefendants’ Motion to Dismiss
27 Defendant/Counterclaimant’s First Amended Counterclaims (also identified in Exhibit
28 “A” to Complaint (ECF 1)).

6. A copy of the U.S. Copyright Office's Online Catalog information for Plaintiff/Counterdefendant Yellowcake's Sound Recording Registration No. SR 0000864336 (**Exhibit "F"**) to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants' Motion to Dismiss Defendant/Counterclaimant's First Amended Counterclaims (also identified in Exhibit "A" to Complaint (ECF 1)).

7. A copy of the U.S. Copyright Office's Online Catalog information for Plaintiff/Counterdefendant Yellowcake's Sound Recording Registration No. SR 0000866471 (**Exhibit "G"**) to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants' Motion to Dismiss Defendant/Counterclaimant's First Amended Counterclaims (also identified in Exhibit "A" to Complaint (ECF 1)).

8. A copy of the U.S. Copyright Office's Online Catalog information for Plaintiff/Counterdefendant Yellowcake's Sound Recording Registration No. SR 0000863321 (**Exhibit "H"**) to the Reply Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants' Motion to Dismiss Defendant/Counterclaimant's First Amended Counterclaims (also identified in Exhibit "A" to Complaint (ECF 1)).

9. A copy of the U.S. Copyright Office's Online Catalog information for Plaintiff/Counterdefendant Yellowcake's Recordation of Assignment of ownership of the Sound Recordings from Chavez, Document No. V9970D519 (**Exhibit "E"** to the Declaration of Seth L. Berman, Esq., in support of Plaintiff and Counterdefendants' Motion to Dismiss Defendant/Counterclaimant's First Amended Counterclaims (ECF 23-6)).

LEGAL STANDARD

Facts subject to judicial notice include those that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.

11

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF AND
COUNTERDEFENDANTS' RULE 12(b)(6) MOTION TO DISMISS
DEFENDANT'S FIRST AMENDED COUNTERCLAIMS**

1 Evid. 201(b)(2). The Court “must take judicial notice if a party requests it and the court
 2 is supplied with the necessary information.” Fed. R. Evid. 201(c)(2).

3 Courts regularly take judicial notice of “undisputed matters of public record [.]”
 4 *Harris v. Cty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (internal citations
 5 omitted); *see also, Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001);
 6 *Kurtz v. Intelius, Inc.*, 2011 U.S.Dist.LEXIS 101922, *3-*4 (E.D.Cal. Sept. 9, 2011)
 7 and *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). Such record
 8 may include the “[r]ecords and reports of administrative bodies,” *Barron v. Reich*, 13
 9 F.3d 1370, 1377 (9th Cir. 1994). A court may take judicial notice of information on the
 10 Internet published and maintained by a government entity. *Daniels-Hall v. National*
 11 *Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010). It accordingly has taken judicial
 12 notice of Copyright Office records in the past. *See, e.g., Sybersound Records, Inc. v.*
 13 *UAV Corp.*, 517 F.3d 1137, 1146 (9th Cir. 2008) (taking judicial notice of Copyright
 14 Office records reflecting the registered owners of certain copyrighted songs);
 15 *Oroamerica, Inc. v. D & W Jewelry Co.*, 10 Fed. App'x 516, n.4 (9th Cir. 2001)
 16 (taking judicial notice of Copyright Office registration certificate); *Ajaxo, Inc., v. Bank*
 17 *of America Technology and Operations, Inc.*, No. 207CV645GEBGGH, 2007 WL
 18 4180361 at *1 (E.D. Cal. Nov 21, 2007) (taking judicial notice of Copyright Office
 19 records showing transfer of ownership of copyright registrations).

20 Documents 1 through 9 are records from the online database compiled and
 21 maintained by the United States Copyright Office, made publicly available on its
 22 website. The Copyright Office records included in this request plainly meet the
 23 standard for judicial notice set forth above. Information published and maintained by
 24 the Copyright Office regarding the ownership and authorship of the copyrighted sound
 25 recordings at issue in this litigation are clearly relevant to Plaintiff/Counterdefendant's
 26 Motion to Dismiss Defendant/Counterclaimant's First Amended Counterclaims as
 27 copyright ownership, proper acquisition thereof by written transfer, and validity of the
 28 ///

1 copyright registrations serving as the statutory prerequisite to bringing an action under
2 the Copyright Act pursuant to Section 411 are at issue.

3 **CONCLUSION**

4 In sum, the records enumerated above meet the requirements of Rule 201(b)(2)
5 of the Federal Rules of Evidence, and therefore, it is respectfully submitted that the
6 Court must take judicial notice of them pursuant to Rule 201(c)(2) of the Federal Rules
7 of Evidence.

8 Dated: October 27, 2020

Respectfully submitted,

9
10 **ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP**

11 By: /s/ Seth L. Berman

12 Seth L. Berman, Esq. (*admitted pro hac vice*)
13 **Attorneys for Plaintiff Yellowcake, Inc., and
14 Counterdefendants Colonize Media, Inc., and
15 Jose David Hernandez**

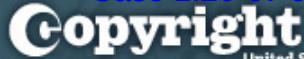
CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system on this 27th day of October 2020, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those that are indicated as non-registered participants, if any.

/s/ Seth L. Berman
Seth L. Berman, Esq.

Abrams, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP
3 Dakota Drive, Suite 300
Lake Success, NY 11042
Phone: (516) 328-2300 / Fax: (516) 328-6638

DOCUMENT 1



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Public Catalog

Copyright Catalog (1978 to present)

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Los Originales de San Juan - Corridos De Poca M...

Type of Work: Sound Recording

Registration Number / Date: SR0000869114 / 2020-04-13

Application Title: Los Originales de San Juan - Corridos De Poca M...

Title: Los Originales de San Juan - Corridos De Poca M...

Description: Electronic file (eService)

Copyright Claimant: Hyphy Music, Inc. Address: 2727 N. Grove Industrial Dr., #155, Fresno, CA, 93727, United States.

Date of Creation: 2015

Date of Publication: 2015-02-24

Nation of First Publication: United States

Authorship on Application: Hyphy Music, Inc., employer for hire; Domicile: United States. Authorship: sound recording.

Rights and Permissions: Hyphy Music, Inc., cj@hyphymusicinc.com

Copyright Note: C.O. correspondence.

Basis for Registration: collective work.

Contents: El Carliche.

Sin Fortuna.

El Fantasma.

Javier Fernandez.

El Original.

Manuel Gonzalez.

Amanda Varela.

Cuando No Se Nace Rico.

Mi Viejo.

Tan Solo Penas.

Names: [Hyphy Music, Inc.](#)

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Public Catalog

Copyright Catalog (1978 to present)

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Los Originales de San Juan - Nuestra Historia (En Vivo)

Type of Work: Sound Recording

Registration Number / Date: SR0000876925 / 2020-08-02

Application Title: Los Originales de San Juan - Nuestra Historia (En Vivo)

Title: Los Originales de San Juan - Nuestra Historia (En Vivo)

Description: Electronic file (eService)

Copyright Claimant: Hyphy Music, Inc. Address: 2727 N. Grove Industrial Drive, #155, Fresno, CA, 93727, United States.

Date of Creation: 2017

Date of Publication: 2017-03-31

Nation of First Publication: United States

Authorship on Application: Hyphy Music, Inc., employer for hire; Domicile: United States. Authorship: sound recording of entire concert.

Rights and Permissions: cj@hyphymusicinc.com

Copyright Note: C.O. correspondence.

Contents: El Rey del Cristal.

El Aguacatero.

El Patas de Diablo.

El Cara de Chango.

La Raza de Michoacan.

La Caspa del Diablo (ft. El Sinaloa)

La Troca del Mono Negro.

Deje de Engordar Maranos.

El Jardinero.

El Grande de Michoacan.

Rey de Reyes.

Pacas de a Kilo.

La Muerte de Manuelon.

El Corrido del Charapo.

Los Cuatro Amigos.

El Numero Gratis.



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Public Catalog

Copyright Catalog (1978 to present)

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Los Originales de San Juan - En Vivo Desde La Cantina de Mi Barrio.

Type of Work: Sound Recording

Registration Number / Date: SR0000820139 / 2018-05-09

Application Title: Los Originales de San Juan - En Vivo Desde La Cantina de Mi Barrio.

Title: Los Originales de San Juan - En Vivo Desde La Cantina de Mi Barrio.

Description: Electronic file (eService)

Copyright Claimant: Hyphy Music, Inc. Address: 2727 N. Grove Industrial Drive, #155, Fresno, CA, 93727, United States.

Date of Creation: 2017

Date of Publication: 2017-03-24

Nation of First Publication: United States

Authorship on Application: Hyphy Music, Inc., employer for hire; Domicile: United States. Authorship: sound recording.

Rights and Permissions: info@hyphymusicinc.com

Copyright Note: Basis for Registration: collective work.

Contents: Mi Ultimo Deseo.

La Peda.

Paloma En Su Nido.

El Morralito.

Me Llamen Lineas De A Metro.

Naci Con Suerte De Rey.

El Tequilero.

El Clavo.

El Jabali.

Con Una Copa En Mi Mano.

La Cantina De Mi Barrio.

El Carlichi.

Vida Prestada.

Fuiste Todo Para Mi.

Eladio Mora.

Names: [Hyphy Music, Inc.](#)

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Public Catalog

Copyright Catalog (1978 to present)

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Los Originales de San Juan - El Campesino.

Type of Work: Sound Recording

Registration Number / Date: SR0000810777 / 2017-03-17

Application Title: Los Originales de San Juan - El Campesino.

Title: Los Originales de San Juan - El Campesino.

Description: Compact Disc.

Copyright Claimant: Hyphy Music, Inc., Transfer: By written agreement. Address: 2660 West Shaw Lane, Suite 110, Fresno, CA, 93711, United States.

Date of Creation: 2016

Date of Publication: 2016-05-31

Nation of First Publication: United States

Authorship on Application: Veronica Portillo; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Jesus Chavez, Jr.; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Eliodoro Barajo; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Mario Delgado; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Jesus Chavez; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Gabino Ayala; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Manuel Uzueta; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Pre-existing Material: sound recording.

Basis of Claim: sound recording.

Rights and Permissions: C.J. Ramirez, Hyphy Music, Inc., 2660 West Shaw Lane, Suite 110, Fresno, CA, 93711, United States, cj@hyphymusicinc.com

Copyright Note: C.O. correspondence.

Basis for Registration: Collective work

Contents: El Campesino.

Solo Dios.
El Arbol.
El Paniqueado.
Dinero Manchado.
El Corrido Del Cach.
El Corrido De Camilo.
El Martelito.
Chicano Jaliciense.
Miguel Fuentes.
En Una Cajita De Oro.
Mis Hijos Son Mi Tesoro.
Marili.
Suplica De Un Padre.

Names: [Portillo, Veronica](#)

[Chavez, Jesus, Jr.](#)

[Barajo, Eliodoro](#)

[Delgado, Mario](#)

[Chavez, Jesus](#)

[Ayala, Gabino](#)

[Uzueta, Manuel](#)

[Hyphy Music, Inc.](#)



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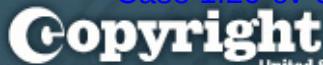
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Album Title: Corridos de Poca M [performed by] Los Originales de San Juan.

Type of Work: Sound Recording

Registration Number / Date: SR0000863319 / 2020-02-07

Application Title: Album Title: Corridos de Poca M [performed by] Los Originales de San Juan.

Title: Album Title: Corridos de Poca M [performed by] Los Originales de San Juan.

Description: Electronic file (eService)

Copyright Claimant: YELLOWCAKE, INC., Transfer: By written contract. Address: 701 E Canal Drive, Turlock, CA, 95380, United States.

Date of Creation: 2015

Date of Publication: 2015-02-24

Nation of First Publication: United States

Authorship on Application: Jesus Chavez, Sr.; Domicile: United States; Citizenship: United States. Authorship: sound recording.

Rights and Permissions: YELLOWCAKE, INC., 701 E Canal Drive, Turlock, CA, 95380, United States, (209) 632-9938, (415) 735-8236, yellowcakecorp@gmail.com

Copyright Note: C.O. correspondence.

Basis for Registration: Collective work.

Contents: El Carlichi.

Sin Fortuna.

El Fantasma.

Javier Fernandez.

El Original.

Manuel Gonzalez.

Amanda Varela.

Cuando Se Nace Rico.

Mi Viejo.

Tan Solo Penas.

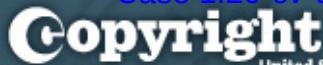


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Album Title: *Nuestra Historia En Vivo [performed by] Los Originales De San...*

Type of Work: Sound Recording

Registration Number / Date: SR0000864336 / 2020-02-11

Application Title: Album Title: Nuestra Historia En Vivo [performed by] Los Originales De San Juan.

Title: Album Title: Nuestra Historia En Vivo [performed by] Los Originales De San Juan.

Description: Compact disc (CD)

Copyright Claimant: YELLOWCAKE, INC., Transfer: By written contract. Address: 701 E Canal Drive, Turlock, CA, 95380, United States.

Date of Creation: 2017

Date of Publication: 2017-03-31

Nation of First Publication: United States

Authorship on Application: Jesus Chavez, Sr.; Domicile: United States; Citizenship: United States. Authorship: a sound recording of entire concert.

Rights and Permissions: YELLOWCAKE, INC., 701 E Canal Drive, Turlock, CA, 95380, United States, (209) 632-9938, (415) 735-8236, yellowcakecorp@gmail.com

Copyright Note: C.O. correspondence.

Contents: El Rey Del Cristal (En Vivo)

El Aguacatero (En Vivo)

El Patas de Diablo (En Vivo)

El Cara De Chango (En Vivo)

La Raza De Michoacan (En Vivo)

La Caspa Del Diablo (En Vivo)

La Troca Del Mono Negro (En Vivo)

Deje De Engordar Marranos (En Vivo)

El Jadrinero (En Vivo)

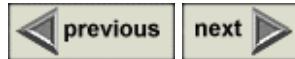
El Grande Michoacan (En Vivo)

Rey De Reyes (En Vivo)

Pakas De A Kilo (En Vivo)

La Muerte De Manuelon (En Vivo)
El Corrido Del Charapo (En Vivo)
Los Cuatro Amigos (En Vivo)
El Numero Gratis (En Vivo)

Names: Chavez, Jesus, Sr.
YELLOWCAKE, INC.



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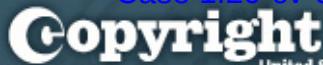
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Album Title: *Desde La Cantina De Mi Barrio [performed by] Los Originales De...*

Type of Work: Sound Recording

Registration Number / Date: SR0000866471 / 2020-02-11

Application Title: Album Title: Desde La Cantina De Mi Barrio [performed by] Los Originales De San Juan.

Title: Album Title: Desde La Cantina De Mi Barrio [performed by] Los Originales De San Juan.

Description: Electronic file (eService)

Copyright Claimant: YELLOWCAKE, INC., Transfer: By written contract. Address: 701 E Canal Drive, Turlock, CA, 95380, United States.

Date of Creation: 2017

Date of Publication: 2017-03-24

Nation of First Publication: United States

Authorship on Application: Jesus Chavez, Sr.; Domicile: United States; Citizenship: United States. Authorship: a sound recording of entire concert.

Rights and Permissions: YELLOWCAKE, INC., 701 E Canal Drive, Turlock, CA, 95380, United States, (209) 632-9938, (415) 735-8236, yellowcakecorp@gmail.com

Copyright Note: C.O. correspondence.

Regarding deposit: Special Relief granted under 37 CFR 202.20(d) of Copyright Office regulations.

Contents: 1. Mi Ultimo Deseo (En Vivo); 2. La Peda (En Vivo); 3. Paloma En Su Nido (En Vivo); 4. El Morralito (En Vivo); 5. Lineas de a Metro (En Vivo); 6. Naci Con Suerte De Rey (En Vivo); 7. El Tequilero (En Vivo); 8. El Clavo (En Vivo); 9. El Jabali (En Vivo); 10. Con Una Copia En Mi Mano (En Vivo); 11. La Cantina De Mi Barrio (En Vivo); 12. El Carlichi (En Vivo); 13. La Vida Prestada (En Vivo); 14. Fuiste Todo Para Mi (En Vivo); 15. Eladio Mora (En Vivo)

Names: [Chavez, Sr., Jesus](#)

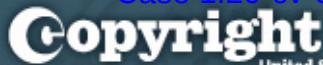
[YELLOWCAKE, INC.](#)

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Album Title: El Campesino [performed by] Los Originales De San Juan)

Type of Work: Sound Recording

Registration Number / Date: SR0000863321 / 2020-02-07

Application Title: Album Title: El Campesino [performed by] Los Originales De San Juan)

Title: Album Title: El Campesino [performed by] Los Originales De San Juan)

Description: Compact disc (CD)

Copyright Claimant: YELLOWCAKE, INC., Transfer: By written contracts. Address: 701 E Canal Drive, Turlock, CA, 95380, United States.

Date of Creation: 2016

Date of Publication: 2016-05-31

Nation of First Publication: United States

Authorship on Application: Jesus Chavez, Sr.; Domicile: United States; Citizenship: United States. Authorship: sound recording.

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Copyright Note: C.O. correspondence.

Basis for Registration: collective work

Contents: El Campesino.

Solo Dios.

El Arbol.

El Paniqueado.

Dinero Manchado.

Corrido del Cach.

El Corrido De Camilo.

El Martelito.

Chicano Jalicience.

Miguel Fuentes.

En Una Cajita De Oro.

Mis Hijos Son Mi Tesoro.
Marili.
Suplica De Un Padre.

Names: [Chavez, Jesus, Sr.](#)
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Los Principios (Album: 15 Corridos Inmortales) & 137 other titles.

Type of Work: Recorded Document

Document Number: V9970D519

Date of Recordation: 2020-02-24

Entire Copyright Document: V9970 D519 P1-19

Date of Execution: effective as of 21Mar19

Date of Certification: 02/20/2020

Title: Los Principios (Album: 15 Corridos Inmortales) & 137 other titles.

Notes: Asset purchase & assignment agreement.

Party 1: Jesus Chavez, Sr., dba Enoch Records.

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Document title: Los Principios (Album: 15 Corridos Inmortales) & 137 other titles.

The complete document is: **V9970 D519 P1-19**

List of titles:

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- 009 El Malvado (Album: 15 Corridos Inmortales); Sound Recording / Los Originales de San Juan; From (Album)
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